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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable William H. Alsup, Judge

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
VS.) NO. CR 16-00440 WHA
)
YEVGENIY ALEKSANDROVICH)
NIKULIN,)
)
Defendant.)
)

San Francisco, California
Tuesday, August 20, 2019

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff:

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ASSISTANT UNITED STATES ATTORNEYS

For Defendant:

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VALERY NECHAY
ATTORNEYS AT LAW

Interpreters: Marina Brodskaya

Reported By: Marla F. Knox, RPR, CRR, RMR
United States Official Court Reporter

1 Tuesday - August 20, 2019

11:33 a.m.

2 P R O C E E D I N G S

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4 **THE CLERK:** Calling criminal action 16-440, United
5 States versus Yevgeniy Aleksandrovich Nikulin.

6 Counsel, please come forward and state your appearance.

7 **MS. KANE:** Good morning, your Honor, Michelle Kane for
8 the United States.

9 **MR. GASNER:** Good morning, Your Honor, good morning,
10 Your Honor, Your Honor, Adam Gasner for Mr. Nikulin, who is
11 present.

12 **MS. NECHAY:** Valery Nechay on behalf of Mr. Nikulin.

13 **THE COURT:** And our interpreter?

14 **INTERPRETER:** Marina Brodskaya, Certified Russian
15 Interpreter, with a note on file in this case.

16 **THE COURT:** In this case, all right. Okay. Welcome
17 to you, Mr. Nikulin. So we are here to set a schedule.

18 **MR. GASNER:** Thank you, Your Honor. Yes, I have had a
19 chance to with co-counsel look at what I think is the most
20 important 9,000 pages of information since we last came before
21 this Court.

22 I don't think it is realistic or effective unfortunately
23 to try this case as scheduled. I have talked to the U.S.
24 Attorney about a possible April date. I have not looked at
25 your calendar or made that request to you yet, of course.

1 I believe that is available for the Government and for the
2 Defense. I have --

3 **THE COURT:** What date?

4 **MR. GASNER:** I had not checked with your clerk yet.
5 Any -- we could proceed probably at any date in April of 2020.
6 I'm open then, and I think that ought to give us -- the
7 Government is indicating, off-the-record to me, that perhaps
8 April 15th would be a -- work with their schedule.

9 I can give the Court any detail it wishes with regard to
10 the reasons for this request, but it has been a lot of
11 information with -- it appears to be starting from scratch.

12 **THE COURT:** All right. Is your client okay with the
13 delay?

14 **MS. NECHAY:** Your Honor, we haven't had an opportunity
15 explicitly to discuss that issue with him. I tried visiting
16 him last Thursday, August 15; but there was a closure at the
17 facility. They were on lockdown. And this morning he was just
18 brought before the Court. So I'm happy to have a conversation
19 with him privately right now and then convey to the Court his
20 position on that.

21 **THE COURT:** All right. I think we should. But before
22 we get there, my notes here say that I can do the case on
23 March 16th or April 27, but I don't have April 15th.

24 **THE CLERK:** April 15th is a Wednesday.

25 **MS. KANE:** I apologize, Your Honor, it was April 13th

1 is what I meant, but I understand that's not available.

2 **THE COURT:** Is that not available?

3 **THE CLERK:** There is a possible civil trial that
4 starts on the 13th.

5 **THE COURT:** What is the name of that case?

6 **THE CLERK:** Schindler versus Pitheon (phonetic).

7 **MS. KANE:** April 27 will be fine for the Government.

8 **THE COURT:** How long will this case go? I have to
9 look ahead a bit.

10 **MS. KANE:** Your Honor, I anticipate not more than two
11 weeks for the Government's case in chief.

12 **THE COURT:** So whenever you looked at these dates, did
13 you take that into account, like two weeks only? Because, I
14 mean, there may be a defense. There might be defense witnesses
15 too.

16 **THE CLERK:** I think we are clear. If we do the 27th,
17 we should be clear for two weeks.

18 **THE COURT:** How about three weeks?

19 **THE CLERK:** There are potential trials to start on the
20 11th of May.

21 **THE COURT:** Let's go back to the 13th of April for a
22 moment. That's a civil case; right?

23 **THE CLERK:** Yes.

24 **THE COURT:** I can always bump a civil case. Do I have
25 any criminal cases in April?

1 **THE CLERK:** Just the beginning of April.

2 **THE COURT:** What case is that?

3 **THE CLERK:** The Genentech case.

4 **THE COURT:** Now, if that one goes, I'm in trouble
5 because that's going to be a long trial. What day does that
6 start?

7 **THE CLERK:** April 6th.

8 **THE COURT:** I couldn't talk you into March 9th? I
9 have this big Genentech case that I don't know what is going to
10 happen there, but I -- it seems possible that that one will go
11 to trial, and that one we fought and fought over the trial
12 date. So I hate to move that one. But March 9 I think would
13 work for me and give me time to finish your case.

14 **THE CLERK:** Judge, for March 9th, we have the Etienne
15 case, so we might --

16 **THE COURT:** We have the Etienne case?

17 **THE CLERK:** There is that motion pending to sever.

18 **THE COURT:** Oh, yeah. Well, I'm still suggesting
19 while we are here that we try to agree on March 9.

20 **MR. GASNER:** Was April 13th available?

21 **THE COURT:** Well, that's -- see, the thing is the
22 Genentech case is April 6th. That is a long trial. That is at
23 least a month trial. I didn't realize that when I gave you
24 these dates, that the April 13th date I had -- I wasn't taking
25 that into account. But I think I have to protect that time

1 period, but March 9 I could -- from March 9 to the end of the
2 month, am I clear?

3 **THE CLERK:** Yes.

4 **THE COURT:** For me that's the best time.

5 **MR. GASNER:** Okay, Your Honor, based on consulting
6 with my co-counsel, we will accommodate that. Thank you very
7 much.

8 **THE COURT:** All right. Now, I'm okay with that date.

9 Is the Government okay?

10 **MS. KANE:** Yes, Your Honor, thank you.

11 **THE COURT:** So I think it would be wise, though, for
12 Mr. Nikulin to be -- because this would mean, what, a two-month
13 or so -- three-month maybe extension of the trial. I want you
14 to take sure he is okay with that.

15 You want to take a moment and go over there and talk with
16 him with the interpreter, and we will just stay silent for a
17 few minutes while you do that.

18 **MR. GASNER:** Yes.

19 **MS. NECHAY:** Thank you.

20 (Pause in proceedings)

21 **MR. GASNER:** Thank you, Your Honor. We have had a
22 chance to speak with Mr. Nikulin off the record for a few
23 minutes. He understands that there will be a necessity of the
24 delay of the current set trial. He is okay with giving us the
25 opportunity to prepare.

1 **THE COURT:** Mr. Nikulin, is that correct?

2 **THE DEFENDANT:** Yes.

3 **THE COURT:** Okay. Reminds me, in this case, do we
4 have a written scheduling order that lays out various dates for
5 motions and the like?

6 **MS. KANE:** Your Honor, we previously had a written
7 scheduling order for an earlier trial date. The Court had
8 vacated that order. We had worked on a new order for the
9 January trial date, but that was never entered given the
10 uncertainty regarding counsel.

11 So Government Counsel and Defense Counsel can work out,
12 based on the Court's previous order, a new scheduling order;
13 and we will submit that as a stipulation and proposed order.

14 **THE COURT:** That's a great plan. Do you think you
15 lawyers are able to do that much?

16 **MR. GASNER:** I think we can, Your Honor. I think so
17 far we have that working relationship.

18 **THE COURT:** Good. Here is one thing -- don't do this
19 to me and my law clerk -- sometimes the lawyers try to give
20 themselves a lot of time and give me and my law clerk minimum
21 time.

22 So make sure you give us time to be reading the briefs and
23 not jam it down our throats, but I will go along with any
24 reasonable schedule you have that adapts the prior schedule to
25 the new date. Okay.

1 **MR. GASNER:** Okay.

2 **MS. KANE:** Yes, Your Honor. And in addition,
3 I believe, based on the record today, that an exclusion of time
4 is appropriate for preparation of Defense Counsel. And in
5 addition, as the Court is aware, this case has previously been
6 designated as complex under the Speedy Trial Act.

7 **MR. GASNER:** I agree with that. And also with the
8 continuity of counsel with regard to Ms. Nechay's
9 representation, I agree.

10 **THE COURT:** All the way up to the new trial date.

11 **MR. GASNER:** All the way up to the beginning of the
12 new trial date.

13 **THE COURT:** So ordered for the reasons stated, but
14 please do one of those stipulated orders.

15 **MS. KANE:** Yes, Your Honor.

16 **THE COURT:** Okay .

17 **MR. GASNER:** Yes, just a couple of housekeeping
18 matters, Your Honor. Because we were not able to meet with
19 Mr. Nikulin this morning, I think the Court wishes for us to
20 have a new financial declaration. We will endeavor to do that
21 for maybe the next calling of the case if that's okay with the
22 Court.

23 **THE COURT:** Fine.

24 **MR. GASNER:** Okay. And then with regard to -- would
25 the Court like any future dates beyond what we just discussed?

1 **THE COURT:** Do we have any motions or anything pending
2 at this point?

3 **MS. KANE:** No, Your Honor.

4 **MR. GASNER:** Nothing pending. We can include possible
5 motions and motions date in the order we just discussed. I'm
6 not requesting it, but I wanted to touch on that if --

7 **THE COURT:** Let's come back in four weeks, and you
8 tell me how it's going. And I do -- I don't want to -- I can't
9 say I insist. I don't want to have to put it that way.

10 One of the problems we had before was that the lawyers --
11 I'm not talking about you, Ms. Nechay. I'm talking about the
12 other lawyers who were not going to talk to their client, and
13 he was languishing out there and doing nothing. And I feel
14 like he is being -- he is being prosecuted by the Feds here,
15 and he is not in his home country and all that. So I want you
16 to be out there advising him and working with him to get ready
17 for trial.

18 **MS. NECHAY:** Absolutely, Your Honor, and my co-counsel
19 and I already have a plan moving forward and certainly will
20 have an active engagement with Mr. Nikulin. I was just
21 recently provided with a plethora of reading materials, and we
22 have already communicated some substantive facts about the
23 case. I think that's a positive development.

24 **THE COURT:** Good. I think we covered this before, but
25 just in case there is some kind of treaty that requires us to

1 give notice to the Soviet -- they don't exist anymore -- the
2 Russian Embassy consulate; right?

3 **MS. KANE:** Your Honor, that was done on the day the
4 Defendant appearing or entering the country.

5 **THE COURT:** Okay. So that's covered. All right.

6 **MR. GASNER:** So, perhaps, Tuesday, September 17th, on
7 your regular criminal calendar at 2:00 o'clock?

8 **THE CLERK:** Our calendar is closed that day.

9 **THE COURT:** I don't mind it but apparently that is a
10 terrible day.

11 **THE CLERK:** The 24th is also closed for the afternoon.

12 **THE COURT:** We can specially set it for a day. How
13 about -- what day can we specially set it for? How about the
14 Wednesday?

15 **THE CLERK:** We can do Wednesday, the 25th.

16 **THE COURT:** How about that Wednesday, the 25th?

17 **MR. GASNER:** That does not look good for the Defense.

18 **THE CLERK:** Sorry.

19 **THE COURT:** The 18th?

20 **THE CLERK:** You are not available in the afternoon.

21 **THE COURT:** Oh, how about the morning?

22 **MR. GASNER:** Your Honor, I'm already before this Court
23 on September 17th if it matters. In other words, we are not
24 doubling up on lawyers.

25 **THE COURT:** Can we find another time during the day to

1 do it on the 17th?

2 **MR. GASNER:** 11:00 o'clock on the 17th, perhaps.

3 **THE COURT:** We could do 11:30.

4 **MR. GASNER:** 11:30 on the 17th would work.

5 **MS. KANE:** That's fine for the Government.

6 **THE COURT:** That's okay.

7 **MS. NECHAY:** I just wanted to apprise the Court, I'm
8 not going to be here on that date; but I know that my
9 co-counsel will apprise the Court of necessary facts.

10 **THE COURT:** All right. I understand. It is hard to
11 get a date that everybody can make it.

12 **MR. GASNER:** Thank you, Your Honor. Lastly, I would
13 just request that the Court appoint myself and Ms. Nechay on
14 the matter. We are currently provisionally appointed.

15 **THE COURT:** Oh, yes, now you are categorically
16 appointed.

17 **MR. GASNER:** Thank you, Your Honor. That's all that
18 we have.

19 **THE COURT:** Okay. Mr. Nikulin, you now have two
20 excellent lawyers representing you at the expense of the people
21 of the United States. And you are going to get fair
22 representation, and we are going to go forward to give you a
23 fair trial. So good luck in working with your lawyers, and we
24 will see you back here in September.

25 **THE DEFENDANT:** Fine.

THE COURT: All right. So long.

MS. KANE: Thank you, Your Honor.

(Proceedings adjourned at 11:48 a.m.)

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CERTIFICATE OF REPORTER

We certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

DATE: Monday, December 14, 2020

Marla Knox

Marla F. Knox, RPR, CRR
U.S. Court Reporter